

Part D

Local Government

Local Government – Generally

Construction Permits

Senate Bill 958/House Bill 921 (both passed) extend through June 30, 2010, the duration of approved State, county, and municipal permits for proposed construction and development that were approved on or after January 1, 2008. The bills do not apply to several specified issued permits or permit approvals. By December 31, 2009, the Maryland Department of Planning must report to the General Assembly on the impact of the bills, whether the extension period should be lengthened, and what other alternatives might be available to the State and local jurisdictions.

The bills do not affect the authority of the State, a county, or a municipal corporation to revoke or modify a permit and do not affect the obligation of permit holders to pay any applicable renewal fees. Affected permits may be cancelled if the State, a county, or a municipal corporation determines that the permit presents a threat to the public health, safety, or welfare of its citizens.

Organizations Representing Education Employees

In Maryland, certificated and noncertificated school employees generally bargain separately. However, in some counties, specific categories of noncertificated professionals are included with certificated employees for collective bargaining purposes. *House Bill 577 (passed)* includes registered nurses employed by the Carroll County Public School System in one of the county's collective bargaining units established for certificated school employees.

A public school employee may refuse to join or participate in the activities of employee organizations. However, an employee organization designated as an exclusive representative of public school employees must represent all employees in the unit fairly and without discrimination, whether or not the school employees are members of the employee organization. Nonmember service or representation fees for certificated school employees are authorized in several counties. *Senate Bill 560/House Bill 122 (both passed)* authorize the Calvert County

Board of Education and the employee organizations representing certificated public school employees to negotiate a reasonable service or representation fee to be charged to nonmembers.

House Bill 1374 (passed) authorizes a fourth bargaining unit to represent noncertificated employees of the Baltimore City Public School System. If the public school employer chooses to designate it, the additional unit would represent Baltimore City school police officers up through the rank of lieutenant.

Environmental Health and Clean Energy

Emerald Ash Borer

The emerald ash borer is an exotic invasive pest responsible for the death of more than 25 million ash trees in Michigan, Indiana, and Ohio, and it currently threatens Maryland's ash trees. The discovery of this federally regulated pest in 2006 in an area where it was believed to have been eradicated prompted the issuance of a quarantine over all of Prince George's County. The quarantine was extended into Charles County when emerald ash borer was detected there in 2008. Removal and destruction of all ash trees in defined areas is the accepted method for eradicating the emerald ash borer. From 2006 through early 2008, more than 35,000 ash trees were removed from 16,000 acres in southern Prince George's County.

House Bill 796 (passed) creates an Emerald Ash Borer Grant Fund to help local governments, businesses, and organizations purchase authorized equipment to remove, dispose of, and replace trees infested by the emerald ash borer that are located within emerald ash borer quarantine areas. The Secretary of Agriculture is authorized to administer the fund and must establish grant application procedures. Grants may not exceed the amount a specified entity has appropriated to finance purchases of equipment to remove, dispose of, and replace infested trees in specified areas.

Environmental Health Monitoring and Testing

House Bill 259 (passed) requires a person responsible for violations of certain provisions of the Environment Article to reimburse the Maryland Department of the Environment or a county for costs incurred in conducting certain environmental health monitoring or testing related to the release of a hazardous substance, discharge of oil, or discharge of a pollutant in the waters of the State. A person may not be required to reimburse a county if the person has entered into a consent order with the department. Also, reimbursement to a county is not allowed if the environmental health monitoring or testing by the county is duplicative of activities conducted by the State, or was not reasonably necessary to protect human health and the environment.

Clean Energy

The Maryland Energy Administration administers several programs aimed at encouraging energy efficiency and renewable energy projects in the State. *House Bill 1567 (passed)* authorizes a county or municipal corporation to enact an ordinance or resolution establishing a

Clean Energy Loan Program to provide loans to residential and commercial property owners for the financing of energy efficiency and certain renewable energy projects. A property owner must repay a loan through a surcharge on the owner's property tax bill.

Under the bill, a county or municipal corporation that establishes a Clean Energy Loan Program may issue bonds to provide financing for loans made through the program. An ordinance or resolution establishing a program must specify eligibility requirements and the terms and conditions of the bond issuance, in accordance with the local government's procedures for authorization to sell bonds. Bonds may be issued through competitive or negotiated sale and may utilize fixed or variable interest rates.

Finances and Trade

Maryland-National Capital Park and Planning Commission

House Bill 1517 (passed) transfers local property tax revenues collected by the Maryland-National Capital Park and Planning Commission (M-NCPPC) to Montgomery and Prince George's counties. M-NCPPC must transfer \$5 million to Montgomery County and \$60 million to Prince George's County from taxes levied against the assessable base in each respective county. For a more detailed discussion of this bill, see the subpart "Bicounty Agencies" of this Part D of this *90 Day Report*.

Local Debt Policies and Reporting

Each local government must annually submit a comprehensive report on its financial condition to the Department of Legislative Services. State law specifies what must be included in this report, which includes the total indebtedness and types of debt. Local governments also must establish and follow an investment policy consistent with guidelines established by the State Treasurer. For this requirement, local government includes Baltimore City, counties, municipal corporations, community colleges, and the Washington Suburban Sanitary Commission.

Senate Bill 458/House Bill 811 (both passed) clarify the reporting requirements of local governments and public corporations and authorities that are authorized to issue debt. The bills also require local governments to adopt debt policies consistent with State and local laws, and constitutional requirements. Public corporations of the State include the Maryland Economic Development Corporation, Maryland Agricultural and Resource-Based Industry Development Corporation, and Maryland Technology Development Corporation. Some examples of authorities include the Maryland Transportation Authority, Maryland Stadium Authority, Maryland Food Center Authority, and Maryland Health and Higher Education Facilities Authority.

Deposits of Unexpended or Surplus Money

The Federal Deposit Insurance Corporation (FDIC) insures deposits in most banks and savings and loan associations located in the United States. Depositors are protected against the

loss of their deposits if an FDIC-insured bank or savings and loan association fails. In October 2008, FDIC deposit insurance was temporarily increased from \$100,000 to \$250,000 per depositor through December 31, 2009. *Senate Bill 617/House Bill 1191 (Chs. 84 and 85)* alter the maximum amount of unexpended or surplus funds that a local government may deposit into a financial institution from \$100,000 to the amount equal to the applicable FDIC maximum insurance coverage limit.

Foreign Trade Zones

A foreign trade zone (FTZ) is a designated site at which special customs procedures may be used. These procedures allow domestic activity involving foreign items to take place prior to formal customs entry. Federal law specifies that a FTZ must be within or adjacent to a U.S. Customs and Border Protection port of entry.

Senate Bill 347/House Bill 94 (Chs. 52 and 53) amend the Baltimore City Charter to conform the definition of a foreign trade zone with the legal boundary definition established by the U.S. Department of Commerce (Foreign Trade Zone Board). The Act also implements federal policy by requiring that a person that wishes to have a site in the State designated as a FTZ apply to the grantee that is closest to the site before applying to another grantee for designation approval.

Counties

Each session, the General Assembly considers a number of bills affecting only one county. The following discussion is intended to provide a sampling of bills of that nature that passed.

Allegany County

The Upper Potomac River Commission operates the Savage River Dam in Garrett County. Funding for the Savage River Dam is provided by Allegany County and other downstream users. *Senate Bill 450/House Bill 489 (both passed)* alter the borrowing authority of Allegany County relating to the Upper Potomac River District (UPRD). The bills repeal a \$200,000 limitation in the borrowing authority of the county and authorize the county to issue bonds and incur debt on behalf of the Upper Potomac River Commission to maintain and repair infrastructure within the river district in accordance with the county's current borrowing procedures, as specified in State law for counties operating under the Code Home Rule form of government. The bill also repeals the requirement that a special tax be levied within the river district to repay the bonds and that the issuance of such bonds be approved by county voters.

Baltimore City

Baltimore City was involved in a lengthy legal dispute after the city police commissioner was relieved from command by the mayor in November 2004 and was sent 45 days notice that his contract of employment, which provided for removal of the commissioner without cause, was

to be terminated. Central to the dispute was the extent of the mayor's authority to remove the police commissioner. In March 2008, the Court of Appeals found that the Public Local Laws of Baltimore City enable the mayor to remove the police commissioner only for specified cause and that the conflicting provision in the employment contract was invalid. *Senate Bill 180/House Bill 92 (Chs. 39 and 40)* give the Mayor of Baltimore City authority to remove the city police commissioner at the pleasure of the mayor, and specifies that this authority is an exception to the prohibition against a city ordinance or act of any municipal officer interfering with the powers of the police commissioner.

Calvert County

Hazardous Materials Cleanup Costs

House Bill 148 (passed) authorizes the Calvert County Commissioners to seek reimbursement of costs incurred in the cleanup of hazardous materials in Calvert County from the person responsible for the release of the hazardous materials.

Rescue and Fire Company Volunteer Benefits

House Bill 520 (passed) provides members of a rescue dive team with benefits comparable to those now provided to members of a volunteer fire company or a volunteer rescue squad under the county's length of service award program. Also, the maximum burial benefit for qualified volunteers who have completed 25 years of certified service is increased from \$3,000 to \$6,000, and the maximum burial benefit for active service volunteers who reach age 70 but have completed less than 25 years of certified service, is increased from \$120 to \$240 for each year of certified service.

Payment to the County Sheriff

House Bill 686 (passed) authorizes Calvert County on or after January 1, 2011, to pay the county sheriff an amount equal to the amount of contributions the county would have made to the county's Employees' Savings Plan (ESP) for the years of service the individual accrued as the county sheriff prior to joining ESP. The amount paid may be in one or multiple payments, as determined by the county commissioners. The bill's provisions take effect at the beginning of the sheriff's next term of office.

Animal Control Fines and Dog Licenses

House Bill 216 (passed) requires that any fine paid for violation of Calvert County ordinances regarding the regulation, humane treatment, and keeping of domestic animals be paid to the Calvert County Treasurer. The bill also authorizes two- and three-year dog licenses to be issued in Calvert County.

Caroline County

Subject to specific exceptions, employers in the State generally may not require or demand, as a condition of employment, prospective employment, or continued employment, that an individual submit to or take a lie detector or similar test. Among the exceptions to the prohibition are individuals applying for specified employment with the county detention centers in Baltimore, Calvert, Cecil, Charles, Harford, and Washington counties; the Baltimore City Jail; the Frederick County Adult Detention Center; and the Prince George's County Department of Corrections or the Anne Arundel County Department of Detention Facilities. *Senate Bill 23/House Bill 548 (both passed)* authorize the Caroline County Department of Corrections to require or demand that an applicant for employment as a correctional officer, or employment in any other capacity that involves direct contact with an inmate in the department, submit to or take a lie detector test.

Carroll County

The purchase of development rights is a tool used by local jurisdictions to preserve agricultural and forestry land. *Senate Bill 780/House Bill 911 (both passed)* authorize Carroll County to enter into an agreement to purchase development rights. A payment obligation in an agreement authorized by the bills is a general obligation of the county, may not be subject to annual appropriation, and is not subject to any limitations that would otherwise be required in the county's charter, public local law, or public general law. An agreement authorized by the bills, the transfer or assignment of the agreement, and any payment required are exempt from State and local taxes. Anne Arundel, Baltimore, Howard, and Prince George's counties have had the same authority to purchase development rights as provided in the bills since 2007.

Cecil County

Distribution of Tobacco Products to Minors

It is a misdemeanor for a person to distribute tobacco products to a minor under certain circumstances. *House Bill 941 (passed)* makes it a civil infraction to distribute tobacco products, cigarette rolling papers, and tobacco-related coupons to minors in Cecil County. The bill subjects violators to civil penalties of \$300 for the first violation, \$500 for the second violation, and \$750 for each subsequent violation.

Regulation of Domestic Animals

House Bill 1045 (passed) decreases from two to one the number of persons in Cecil County who must make a sworn complaint in the District Court in Cecil County alleging that a domestic animal disturbs the peace and quiet of an inhabited neighborhood before a summons to the owner or keeper to appear before the court must be issued. The bill also increases the maximum penalty for failing to comply with county law or a court order related to domestic animals disturbing the peace of a neighborhood or the keeping of a vicious dog from \$25 to \$500.

Charles County

A volunteer worker for a unit of a political subdivision in Allegany, Carroll, Cecil, Charles, Frederick, Garrett, Queen Anne's, St. Mary's, Somerset, Washington, or Worcester counties is not an employee covered by workers' compensation. *Senate Bill 376/House Bill 380 (both passed)* establish that auxiliary volunteers of the Charles County Sheriff's Office are employees covered by workers' compensation while performing work assigned by the sheriff. The bills also specify how the average weekly wage is computed for an auxiliary volunteer of the Charles County Sheriff's Office if the volunteer is entitled to workers' compensation. There are about 20 auxiliary volunteers of the Charles County Sheriff's Office.

Frederick County

Retirement Benefits for County Commissioners

The Frederick County Commissioners consists of five elected members who are entitled to an annual salary of \$45,000; reimbursement for expenses incurred while performing board duties, as provided in the county budget; and fringe benefits regularly provided to county employees. *House Bill 477 (passed)* authorizes the Frederick County Commissioners to establish that its members also receive benefits provided in the county retirement program or to establish criteria and retirement benefits specific to the commissioners. However, no criterion or benefit may exceed those provided to members of the General Assembly and the compensation of a commissioner may not increase during the commissioner's current term.

Penalty for Overdue Water and Sewer Charges

Frederick County must turn off a property's water if a water and sewer charge is unpaid 30 days after the date a bill for the charge is sent and after written notice is left on the premises or sent to the property owner's last known address. The water service may not be turned on until the charge has been paid, along with a \$10 penalty. Frederick County advises that shutting off and then restoring water service to a property costs the county approximately \$100. *Senate Bill 607/House Bill 82 (both passed)* require the Frederick County Commissioners to establish a reasonable penalty for overdue water and sewer charges.

Garrett County

State's Attorney Salary

In 2005, the salary of the State's Attorney for Garrett County was tied to the salary of a District Court judge, which eliminated the need for review of the salary by the Garrett County Salary Study Commission as was required to be done every four years. *Senate Bill 224 (passed)* repeals the requirement that the commission study the salary of the State's Attorney. The commission may still recommend an increase or decrease in the State's Attorney salary.

Natural Gas

Recently, energy companies have shown interest in locating natural gas from a geologic formation in Garrett County. *Senate Bill 651/House Bill 803 (both passed)* alter various provisions of law regarding natural gas production in Garrett County. The tax rate on natural gas production decreases from 7% to 5.5% of the wholesale market value at the well head. The bills also change required distribution of related tax revenues, specifying that one-eleventh of the revenues be distributed to municipalities in the county on a per capita basis and the rest be distributed to the county.

Signs Adjacent to State and Local Roadways

For the past several years, the Garrett County Commissioners have discussed concerns about the height, location, and size of advertising signs in the county. Signs are regulated in part of the county but not countywide. *House Bill 606 (passed)* authorizes the county commissioners to enact ordinances regulating the height, size, location, and setback of an advertising sign adjacent to a State or county road in Garrett County, provided that these ordinances are not less stringent than any applicable State or federal law.

Howard County

House Bill 1369 (passed) requires an applicant for a zoning regulation amendment in Howard County to disclose, under oath, any political contributions of at least \$500 over the preceding 48 months to a candidate for county executive or county council; and business relationships with either the county executive or a member of the county council. This same disclosure requirement already applies to an applicant for a zoning map amendment or an individual who participates in the adoption and approval of a comprehensive zoning plan.

Montgomery County

The State and political subdivisions are authorized to operate traffic control signal monitoring systems to catch red light violations. Montgomery County is authorized to operate automated enforcement systems in specified areas to detect drivers who violate speeding laws. *House Bill 822 (passed)* allows the use of automated enforcement systems at railroad crossings in Montgomery County to identify, and issue citations to those who illegally pass through railroad crossings. The bill establishes the procedure for the use of the automated systems and a maximum civil penalty of \$100. Prince George's County currently administers automated enforcement at railroad crossings.

St. Mary's County

House Bill 1559 (passed) establishes a Task Force to Study the Governance and Structure of the St. Mary's County Metropolitan Commission. The task force must study the governance and structure of the commission and how best to continue the provision of water and sewer services to county citizens. The task force will terminate on August 31, 2010.

Washington County

Washington County public laws prohibit the assignment of a master electrician’s license to another individual or company, even if the master electrician plans to directly supervise the activity. This effectively prevents a Washington County general contractor who administers a contract from hiring a master electrician as a subcontractor because the employees of the general contractor cannot perform electrical work under the supervision of the master electrician. *House Bill 1220 (passed)* authorizes the Washington County Board of Examiners and Supervisors to allow master electricians to assign their licenses to individuals who work under the direct supervision of the electrician, even if these individuals are not employees of the master electrician.

Wicomico County

Counties, municipal corporations, and taxing districts must file an annual financial report covering the full period of the previous fiscal year to the Department of Legislative Services (DLS) and an annual audit report to the State legislative auditor. *Senate Bill 574 (passed)* alters the filing date by which Wicomico County must submit its annual financial report to DLS and its annual audit to the State Legislative Auditor from November 1 to January 1.

Worcester County

Except in Howard, Montgomery, and Prince George’s counties, a new or used car dealer may not sell, barter, deliver, give away, show, or offer for sale a motor vehicle or certificate of title for a motor vehicle on a Sunday. *House Bill 846 (passed)* allows motorcycle dealers in Worcester County to conduct business on Sunday.

Municipal Governments

Tax Increment Financing

Tax increment financing (TIF) is a method of public project financing whereby the increase in the property tax revenue generated by new commercial development in a specific area, the TIF district, pays for bonds issued to finance site improvements, infrastructure, and other project costs located on public property. *Senate Bill 39 (passed)* expands the authority of a municipal corporation to use TIF to encourage redevelopment in revitalization areas; mixed use centers; blighted areas; and developed areas and growth areas, as defined in a county or municipal corporation land use plan, through the installation of specified infrastructure improvements (e.g., streets, utilities, and park facilities).

Audit Requirements

Municipal corporations and State-created taxing districts must have an annual, independent audit conducted by a certified public accountant. However, municipal corporations

and taxing districts with annual revenues below \$50,000 in the prior four fiscal years may petition the Office of Legislative Audits for a waiver allowing an audit to occur once every four years instead. State law requires a county-created special taxing district to conduct an annual audit unless annual expenditures are below \$50,000, in which case an audit may occur once every four years or more frequently if required by the county. *Senate Bill 146/House Bill 19 (Chs. 32 and 33)* increase the eligibility threshold for a municipal corporation or State-created special taxing district to receive an audit every four years to \$250,000 and similarly increases the threshold for a county-created special taxing district to be eligible for an audit every four years to \$250,000.

Land Annexations

A December 2005 Maryland Department of Planning report indicated that, from 1997 through 2005, the acreage of municipal corporations in Maryland had grown by an estimated 11%, or 27,453 acres, as a result of annexation, with the greatest percentage increases occurring in Western Maryland and on the Eastern Shore. Chapter 381 of 2006 altered State law regarding municipal annexation by, among other things, requiring municipalities that exercise zoning authority to include a municipal growth element in their comprehensive plans and for annexations on or after October 2009, requiring a municipal annexation plan that is consistent with the municipal growth element.

Senate Bill 350/House Bill 220 (both passed) exempt proposed municipal annexations of parcels of land that are five acres or less, and that are part of a lot containing at least one other parcel that has been part of the municipal corporate area for at least three years, from the requirements that consent be obtained from a specified percentage of area residents and property owners and that the proposed annexation be subject to a referendum. A municipal corporation, however, may not annex a total of more than 25 acres under the exceptions of the bills, and the bills do not apply to land zoned for agricultural use. Provisions of the bills terminate September 30, 2011.

Commercial Sign Regulations

A municipal corporation may enact reasonable regulations concerning buildings and signs to be erected within its limits, including a building code and the requirement for building permits; however, a municipal corporation may not pass a local law that is inconsistent, or in conflict, with any ordinance, rule or regulation passed, ordained or adopted by the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Washington Suburban Sanitary Commission. *House Bill 1141 (passed)* authorizes municipal corporations in Montgomery County to enact local laws imposing additional or stricter commercial sign regulations than are imposed by the State, M-NCPPC, or the county.

Bi-county Agencies

Maryland-National Capital Park and Planning Commission

The Maryland-National Capital Park and Planning Commission (M-NCPPC) is a bicounty agency empowered by the State in 1927 to acquire and administer a regional system of parks within the Maryland-Washington Regional District and administer a general plan for the physical development of the area. In 1970, M-NCPPC became responsible for managing the Prince George’s County public recreation program. M-NCPPC is governed by a ten member commission with five members appointed by the County Executive of Prince George’s County and confirmed by the county council, and five members appointed by the Montgomery County Council with the approval of the county executive.

Planning Functions

M-NCPPC is currently required, at the discretion of the district council for each county, to initiate and adopt a general plan for the development of that portion of the regional district located in each county. While State law does not specify how often the general plan must be updated, the commission is required to initiate and adopt amendments to the general plan “from time to time.” M-NCPPC must also initiate and adopt a map of each county within the regional district divided into local planning areas and must initiate and adopt a local area master plan for each area which also may be amended from time to time.

House Bill 1138 (passed) requires the M-NCPPC to review the general plan for the development of the Prince George’s County portion of the Maryland-Washington Regional District two years after each U.S. decennial census. The Prince George’s County District Council must also consider whether to amend the local area master plan within the regional district once every six years. The decision to amend the local area master plan must be in writing and include reasons for the decision.

House Bill 1141 (passed) authorizes municipalities located in Montgomery County to enact local laws imposing additional or stricter commercial sign regulations than are imposed by the State, the M-NCPPC, or the county. Under current law, the legislative body of a municipality may enact reasonable regulations concerning buildings and signs to be erected within the limits of the municipality, including a building code and the requirement for building permits; however, the legislative body of a municipality may not pass an ordinance that is inconsistent or in conflict with any ordinance, rule or regulation passed, ordained or adopted by M-NCPPC and the Washington Suburban Sanitary Commission. The bill clarifies that municipalities located in Montgomery County have the same authority that all municipalities have in the rest of the State.

Fund Balance Transfer

Prince George’s County and Montgomery County levy taxes against property in each county on behalf of M-NCPPC and pay the aggregate amount collected from these taxes to

M-NCPPC. State law specifies the specific purposes for which M-NCPPC may expend these tax proceeds in each county. These purposes include the acquisition, maintenance, development, and operation of the park system in the county; acquisition of park lands; recreational purposes; administrative purposes; and repayment of outstanding bonds or bonds issued in the future. *House Bill 1517 (passed)* transfers \$65 million total in local property tax revenues collected by the M-NCPPC to the two counties.

M-NCPPC is required to transfer \$5 million to Montgomery County and \$60 million to Prince George's County from taxes levied against the assessable base in each county. The transfer of funds may not result in a projected deficit in M-NCPPC funds. Specifically, the bill directs M-NCPPC to make payments of \$15 million to Prince George's County on December 1, 2009, March 1, 2010, December 1, 2010, and March 1, 2011. The bill does not specify how these funds are to be used. On or before October 1, 2009, M-NCPPC must transfer \$5 million to Montgomery County. These funds may only be expended by the county for purchasing interests in real property to prevent nonagricultural uses of lands designated for agricultural preservation.

Employee Protections

House Bill 1135 (passed) specifies that an employee of the M-NCPPC, other than a park police officer, who suffers from Lyme disease is presumed, if certain criteria are met, to have a compensable occupational disease if he or she did not have the disease before being assigned to work regularly in an outdoor wooded environment. This provision already applies to park police officers. Further discussion of this bill is provided in Part H – Worker's Compensation of this *90 Day Report*.

Bicycle and Pedestrian Advisory Committee

The Governor currently appoints a 21-member Bicycle and Pedestrian Advisory Committee to provide guidance to various State agencies concerning funding of bicycle and pedestrian related programs, public education and awareness of bicycle and pedestrian related activities and safety, and other issues. *House Bill 1144 (passed)* adds an additional representative of the M-NCPPC to this advisory committee.

Washington Suburban Sanitary Commission

The Washington Suburban Sanitary Commission (WSSC) is the eighth largest water and wastewater utilities in the country and provides water and sewer services to 1.8 million residents in Montgomery and Prince George's counties. It has over 460,000 customer accounts, serves an area of around 1,000 square miles, and currently employs more than 1,500 people. The agency operates four reservoirs, two water filtration plants, and six wastewater treatment plants. Additionally, the Blue Plains Water Pollution Control Plant handles as much as 169 million gallons per day under a cost sharing agreement with WSSC. The agency maintains nearly 5,500 miles of water main lines and over 5,300 miles of sewer main lines.

Employee Protections

House Bill 1133 (Ch. 162) requires the WSSC to implement whistleblower protection regulations by October 1, 2010. The regulations must be similar to existing protections for Executive Branch State employees, as provided in State law. Adopted whistleblower protections must prohibit a manager or supervisor from taking or refusing to take a personnel action as a reprisal against an employee who discloses information that the employee reasonably believes evidences (1) an abuse of authority, gross mismanagement, or gross waste of money; (2) a substantial and specific danger to public health or safety; or (3) a violation of law. WSSC must provide employees with written notice of the protections and remedies provided by the whistleblower regulations and must establish a system in which complaints or grievances may be filed and investigated. The regulations must also set forth remedial actions that may be taken by the WSSC if a violation is found to have occurred.

Financial Oversight

WSSC is currently required to file a certified copy of the annual audit and current financial statements with the County Executive and County Council of Prince George's County and the County Executive of Montgomery County. **House Bill 1136 (passed)** requires these reports to be filed with the Montgomery County Council and authorizes the Montgomery County Council or its duly authorized agents, at any time, to audit and examine the books and records of WSSC provided that the audit or examination is without cost to WSSC.

Similarly, **House Bill 1134 (passed)** requires the WSSC to file a certified copy of the annual audit and current financial statements with the Montgomery County and Prince George's County Senate and House Delegations to the Maryland General Assembly.

System Development Charges

Montgomery and Prince George's county councils are authorized to grant a full or partial exemption from the system development charge imposed by WSSC to nonprofit organizations that exclusively provide youth services. The exemption amount is limited to \$80,000 and is scheduled to terminate June 30, 2009.

House Bill 1139 (passed) extends authorization for Montgomery and Prince George's counties to exempt nonprofit youth services organizations from system development charges imposed by WSSC until December 31, 2010. The bill also expands this exemption to include nonprofit organizations that primarily, rather than exclusively, provide recreational and educational programs and services to youth.

Zoning and Planning

Smart, Green, and Growing

The Task Force on the Future for Growth and Development in Maryland (established by Chapter 381 of 2006 and modified by Chapter 626 of 2007) is charged with studying a wide range of smart growth and land use issues impacting Maryland and is required to advise the Smart Growth Subcabinet until it terminates in December 2010. The task force released a report in January 2009 providing detailed recommendations for various actions by the State and local governments. The Administration introduced three measures, *Senate Bill 273/House Bill 294 (both passed)*, *Senate Bill 276/House Bill 295 (both passed)*, and *Senate Bill 280/House Bill 297 (both passed)* all stemming from the report's recommendations.

Planning Visions and Local Government Planning Tools

The Maryland Economic Growth, Resource Protection, and Planning Act of 1992 (the Planning Act), sought to organize and direct comprehensive planning, regulating, and funding by State, county, and municipal governments in furtherance of a specific economic growth and resource protection policy. The Planning Act is organized around eight statutory vision statements which must be pursued in county and municipal comprehensive plans, where priorities for land use, economic growth, and resource protection are established. The visions must also be followed by the State in undertaking its various programs. Both State and local funding decisions on public construction projects must adhere to the visions.

The Administration advises that the State planning visions have never been modernized to reflect and keep pace with current growth and development patterns and trends or Maryland's commitment to smart growth. *Senate Bill 273/House Bill 294* implement a key recommendation of the task force to modernize the visions by replacing the State's 8 existing planning visions with 12 new visions.

The 12 new visions address quality of life and sustainability; public participation; growth areas; community design; infrastructure; transportation; housing; economic development; environmental protection; resource conservation; stewardship; and implementation.

The bills also address two local government planning tools: adequate public facilities ordinances (APFOs) and transfer of development rights (TDR) programs. As to the first tool, generally local governments enact APFOs to ensure that infrastructure necessary to support proposed new development is built concurrently with, or prior to, that new development. APFOs are an effort to time the provision of public facilities (water, sewer, schools, roads, and emergency services) to be consistent with development demand and local comprehensive plans. While APFOs can be a strong tool to influence and guide growth, they are more frequently used when certain public facilities have already reached capacity. When communities have weak comprehensive plans or weak comprehensive plan implementation, APFOs may prompt sprawl development inadvertently.

The bills require specified local jurisdictions to report to the Maryland Department of Planning (MDP) on APFOs restrictions in priority funding areas (PFAs) every two years. The report must include information about the location of the restriction; infrastructure affected by the restriction; estimated date for resolving the restriction; the proposed resolution of the restriction, if available; date a restriction was lifted, as applicable; and terms of the resolution that removed the restriction. In addition, the bills require MDP to report on the statewide impact of APFOs every two years. The report has to identify (1) geographic areas and facilities within PFAs that do not meet local adequate public facility standards; and (2) scheduled or proposed improvements to facilities in local capital improvement programs.

As to the second planning tool, *Senate Bill 273/House Bill 294* authorize local jurisdictions to establish TDR programs within PFAs to purchase land for the development and construction of public facilities. Generally, under TDR programs, residents who occupy certain areas in a county (sending areas) are precluded from selling their land to developers. In exchange, these landowners are awarded TDRs which may be sold on the open market to developers. These rights are applied by developers to designated receiving areas (areas where the county is attempting to foster development). Under the bills, proceeds from the sale of development rights in PFAs must be used for site acquisition and facility construction in PFAs; however, if the public facility is a school or educational facility, the proceeds may be used only for land acquisition. In addition, the bills prohibit development rights associated with land owned by a local jurisdiction on October 1, 2009, from being sold or transferred under the bills after the bills takes effect on October 1, 2009.

Annual Reports – Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions

Senate Bill 276/House Bill 295 make several administrative and substantive changes to State law governing the annual report that local planning commissions are required to prepare. Specifically, the bills make the annual report requirement applicable to charter counties and Baltimore City so that all local jurisdictions are expressly required to submit this report. The bills provide for a specific date, July 1, by when each planning commission must file the annual report with the local legislative body and require the annual report to state which ordinances or regulations have been adopted or changed to implement the planning visions. MDP is authorized to submit comments on an annual report.

The more substantive changes made by *Senate Bill 276/House Bill 295* involve the establishment of land use goals and the inclusion in the annual report of measures and indicators to demonstrate compliance with the land use goals. As to the land use goals, the bills state that the statewide land use goal is to increase the current percentage of growth located within PFAs, and to decrease the percentage of growth located outside PFAs. A local jurisdiction is required to develop a percentage goal toward achieving the statewide goal. If all the land within the boundaries of a municipal corporation is a PFA, the municipality is not required to establish a local goal for achieving the statewide goal.

As to the measures and indicators, *Senate Bill 276/House Bill 295* list the following items that must be included in the annual report:

- the amount and share of growth being located inside and outside PFAs;
- the net density of growth being located inside and outside PFAs;
- the creation of new lots and issuance of building permits inside and outside PFAs;
- the development capacity analysis;
- the number of acres preserved using local agricultural land preservation funding; and
- specified information on achieving the statewide goal.

A county or municipal corporation that issues fewer than 50 building permits for new residential units per year is not required to include information in the annual report on measures and indicators.

In addition, the bills authorize MDP to adopt regulations that detail the manner in which the measures and indicators are to be submitted and transmitted in the annual report. MDP must also develop measures and indicators that will be collected by MDP and consider which measures and indicators can be collected by the National Center for Smart Growth Research and Education (National Center). On or before January 1 of each year, MDP, in consultation with the National Center, must submit a report to the Governor and the General Assembly on the measures and indicators collected. All of this information must be posted on the National Center's web site. Lastly, the Task Force on the Future for Growth and Development, in consultation with local governments, the National Center, and other stakeholders, must recommend by July 1, 2009 additional measures and indicators to be collected by the State, the National Center, or a local jurisdiction in specified categories of information.

Smart and Sustainable Growth

The Maryland Court of Appeals ruled in *David Trail, et al. v. Terrapin Run, LLC et al.*, 403 Md. 523 (2008), that a special exception could be granted to a local comprehensive plan even if it did not strictly conform to the comprehensive plan. However, the broad language of the majority opinion was seen by many to mean that local land use ordinances and regulations need not be consistent with the locally adopted comprehensive plan. This ambiguity had the potential to undermine Article 66B and the central role that comprehensive plans play in State land use laws and associated decisions regarding specific development projects.

Senate Bill 280/House Bill 297 expressly overturn the Court of Appeals ruling in *Terrapin Run* by requiring that specified actions taken by local governments, including the granting of a special exception, must be "consistent with" their local comprehensive plans. The bills define what is "consistent with," or having "consistency with," a comprehensive plan to mean generally that an action taken by a local government related to local planning, water and

sewer plan review, annexation requirements, and critical area growth allocations will “further, and not be contrary to” specified items in the plan. The specified items are policies, timing of the implementation of the plan, timing of development, timing of rezoning, development patterns, land uses, and densities or intensities. The bills create a separate definition of “consistency” for ordinances and regulations applicable within PFAs that omits land uses and densities and intensities so that these items do not interfere with the ability of a local jurisdiction to enact ordinances related to planned unit developments, mixed uses, and density bonuses within a PFA.

In addition, the bills expressly require local jurisdictions to enact, adopt, amend, and execute a comprehensive plan. Lastly, the bills require members of local government planning commissions and boards of appeal to complete an educational course on the role of the comprehensive plan, proper standards for special exceptions and variances as applicable, and the jurisdiction’s own land use ordinances and regulations. The Task Force on the Future for Growth and Development is required to develop recommendations on the educational course for local jurisdictions, and MDP is required to develop an online planning education course for local jurisdictions by January 1, 2010. Local jurisdictions are authorized to develop their own educational course in lieu of MDP’s education course.

Miscellaneous Land Use Issues

Transit-oriented Development

Senate Bill 274/House Bill 300 (both passed) authorize certain counties and municipalities to finance the costs of infrastructure improvements located in or supporting a transit-oriented development (TOD), including the cost for operation and maintenance of infrastructure improvements. The Maryland Economic Development Corporation (MEDCO) may enter into agreements with certain counties and municipalities to use proceeds from a special taxing district, including tax incremental financing, to repay debt service on bonds issued by MEDCO on behalf of TOD projects. For a further discussion of *Senate Bill 274/House Bill 300*, see the subpart “Economic and Community Development” under Part H – Business and Economic Issues of this *90 Day Report*.

BRAC Community Enhancement Act

House Bill 1429 (passed) changes the effective date of a 10-year BRAC Revitalization and Incentive Zone from the date the Secretary of Business and Economic Development designates a zone to the date the first property in a zone becomes a qualified property. The bill also changes the annual date by which local jurisdictions must notify the State Department of Assessments and Taxation (SDAT) regarding qualified properties from November 1 to February 1, and the annual date that SDAT calculates payments to local jurisdictions from December 1 to March 1. For a further discussion of *House Bill 1429*, see the subpart “Economic and Community Development” under Part H – Business and Economic Issues of this *90 Day Report*.

